

EXHIBIT

184

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
: Master File No.
Global Brokerage, Inc. : 1:17-cv-00916-RA
F/k/a FXCM, Inc. :
Securities Litigation :
----- :

** C O N F I D E N T I A L **

REMOTE VIDEO DEPOSITION OF: JOSEPH S. PATT
THURSDAY, APRIL 23, 2020

REPORTED BY:
SILVIA P. WAGE, CCR, CRR, RPR

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2 Defendants?

3 A. Because they -- you know, they
4 misrepresented the nature of the core business in
5 their SEC filings and in their marketing
6 agreement, which, you know, made it -- made our
7 investment not what we thought it was.

8 Q. And what do you think -- what do you
9 think those misrepresentations were? Can you
10 summarize the allegations for me?

11 A. Sure, that they -- they said they
12 were, basically, an agency business that allowed
13 institutional clients to trade --

14 (There is a discussion off the
15 record.)

16 A. (Continuing.) Institutional and
17 retail clients to trade FX products and lever --
18 and lever them up. But it turns out they were
19 also like, effectively, betting, you know,
20 against their clients or taking risk or doing
21 something it clearly meant they weren't an agency
22 product, which put their core business at risk
23 from a regulatory perspective, because they were
24 misrepresenting what they were doing to their
25 clients and to their investors.

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2 Q. And what specific evidence did 683
3 Capital have to support those allegations, as you
4 understand them?

5 A. The regulatory filings that came out
6 at the beginning of 2000 -- you know, the
7 beginning of 2017 where they admitted to doing it
8 and got banned from doing business in US.

9 Q. Okay. Other than those regulatory
10 filings, are you aware of any facts to support
11 those allegations?

12 A. No. But those are pretty damning
13 filings and a result. They got banned.

14 Q. Okay. Aside from deposition
15 preparation, when did you first speak to anyone
16 at The Rosen Law Firm about potentially bringing
17 this case?

18 A. After -- well, at some point after
19 they announced that they were bringing a case,
20 the press release.

21 Q. And who approached who?

22 A. We approached them.

23 Q. How did you find out about the case?

24 A. We saw the press release. I mean, we
25 were following the company closely.

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2 A. We read the public announcements and
3 the SEC filings, both about their balance sheet
4 and their -- the investments, the rescue
5 financing investment that came from Leucadia. We
6 read, you know, the indenture on the convertible
7 bonds that we bought and we looked for the
8 intercreditor agreement between the convertible
9 bonds and the upstream and we read those
10 documents, did our analysis as to what the
11 balance sheet would be like post what their
12 public filing said and decided it was a good
13 investment.

14 Q. So, in terms of the types of
15 information that you analyzed in connection with
16 your investment, you're looking at their public
17 filings about the "SNB Flash Crash"; is that
18 correct?

19 A. Yes.

20 Q. The Leucadia, the other -- what other
21 sources of information about the company did you
22 look at and analyze?

23 A. I mean, 10-K or 10 -- and 8, you
24 know, 10-Qs, the latest documents. And the --and
25 the --

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2 A. Typically, again, public filings, you
3 know, ongoing, you know, earnings announcements,
4 that sort of thing. In this case, there were
5 lots, you know, there were lots of those.

6 And what else did we do? Actually,
7 we would look at comparable companies to see how
8 they were trading and what they were doing and we
9 would talk to management, if we could.

10 Q. Who would you talk to at management?

11 A. Whoever they would -- it depends how
12 they would make it available, typically. It
13 could be all sorts of people. But, you know --

14 Q. So, in connection -- I'm sorry.

15 A. I was going to say IR, CFOs, CEOs,
16 typically.

17 Q. So, in connection with FXCM,
18 specifically, who in management did you talk to?

19 A. I don't recall.

20 Q. Do you recall speaking to management
21 at FXCM at any point in connection with your
22 investment decisions?

23 A. I don't, actually.

24 Q. So sitting here --

25 A. It's a long time ago. I just don't

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2 understanding of that event's effect on FXCM?

3 A. So my recollection was and based on
4 what they said was, you know, they had clients
5 that were say short the Swiss franc on a very
6 levered basis. The Swiss franc moved, you know,
7 in an unprecedented fashion. It moved through
8 all their clients' equity, well-passed whatever
9 their clients could pay back and they were --
10 they had counterparties and they suffered a loss
11 as a result because it became their loss, once it
12 moved enough through their client's equity.

13 Q. And so why would that make -- why
14 would you be interested in investing in FXCM at
15 that time?

16 A. Because at that moment then -- they
17 announced how much their losses were or they said
18 their losses were. You could look at their
19 balance sheet based on the public filings. You
20 could see that they were getting, you know, a
21 rescue financing from Leucadia. So they weren't
22 going to have to, like, liquidate immediately.

23 And there was information based on
24 the money that was coming in and statements
25 around that that you could value their assets

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2 based on what they said and for what their
3 business had been worth based, again, on what
4 they said and it looked like you were well
5 covered, that the bottoms were easily going to
6 recover a hundred cents on the dollar and they
7 were trading in the 40s, I believe.

8 Q. Okay. So what FXCM securities did
9 683 Capital purchase at that point?

10 A. The convertible bonds, convertible
11 notes.

12 Q. The Rule 144A notes?

13 A. I thought they were registered.
14 That's my recollection. Am I incorrect?

15 I think the 144A, when they were
16 issued and then became -- I may be wrong about
17 this. So it's a long time since -- a long time
18 since we did this.

19 But I thought they were issued maybe
20 144A and then had become registered, because they
21 were convertible. So they had stock underlying
22 them. So the typical pattern on a convertible
23 bond is -- like that it is gets issued as a 144A
24 and then it's quickly -- registered in the next
25 six months or it becomes registered just by the

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2 point, then how much we would have ultimately
3 lost.

4 Q. Okay. But it's not -- that is math
5 you can do from this sheet, but it's not
6 summarized in this sheet?

7 A. I don't see it in this sheet, but you
8 can, certainly, do it from this sheet.

9 Q. Okay. And if you look at -- again,
10 still focusing on the bond portion of this sheet,
11 in October of 2015, there are additional buys of
12 the 2.25 percent --

13 A. Correct.

14 Q. What was the rationale for purchasing
15 at that point?

16 A. Price again.

17 Q. Can you explain that in more detail?

18 A. Yeah, price had come down quite a
19 bit. Time had passed a bit, so the yield was a
20 lot higher. We had been following the company
21 and they had been, you know, achieving some of
22 their sales and milestones. Money had been going
23 back to Leucadia. So the money was senior to us
24 was coming back. We were more optimistic in the
25 value of the business and the value of our

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2 options purchases in connection with FXCM
3 securities?

4 A. Again, I haven't -- I haven't looked
5 at the sum total of trades. I just looked at a
6 few of those trades. But my recollection is
7 mostly to, you know, bet on them going up.

8 We were -- it was a very small market
9 cap at that point. There was a lot of thinking
10 that, you know, their customers could get excited
11 again. There is a lot of reasons why the stock
12 could go up a lot.

13 Q. I guess what I'm trying to under --

14 A. This was a good business.

15 Q. I'm trying --

16 A. This was a good business. It paid
17 like \$140 million in 2013 or 2014, like, you
18 know, based on the filings, we believed it to be
19 a good business, I should say.

20 And given that, like, the idea that
21 it could -- you know, it was trading at a tiny
22 market cap seemed like, you know, a good
23 risk/reward. And if you buy options, you can get
24 a really levered upside return if it went back to
25 what it used to be worth.

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2 right, and I'll trade them for you and you just
3 pass on my execution and somehow I can use that
4 value, especially, in a much less regulated
5 market like FX trading. I can use that flow to
6 get long the franc ahead of somebody else or get
7 short the yen ahead of somebody else, which is,
8 you know, not something you want to hear your
9 brokers doing while you're trading an asset.

10 Q. So you're general understanding of
11 paper flow arrangements have to do with front
12 running situations for the brokers who have the
13 arrangements?

14 A. For the guy who is paying for the
15 flow, yes.

16 Q. What is your understanding of paper
17 flow as it is relevant to your complaint against
18 FXCM?

19 A. Yeah, my understanding is they were
20 effectively through, you know, a semi-controlled
21 or sister or friendly entity trading against our
22 customers.

23 Q. And what do you mean by trading
24 against their customers?

25 A. Taking positions, you know, when

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2 they're either -- not necessarily in-house but
3 sisterly to house -- that their customer --
4 against their customer's flow. They were making
5 money based on which way their customers were
6 going.

7 Q. Is that --

8 A. Or thinking they were.

9 Q. So, when you say trading against the
10 customers, as alleged in the complaint here, you
11 mean, something other than hedging a position?

12 A. Yes, they were an agency. In other
13 words, their interests weren't aligned with their
14 customers. They were using the information that
15 their customers were giving them to monetize it
16 somehow or so they believed in contravention of
17 what they were representing to their customers.

18 Q. And what were they "representing" --
19 what they were "representing" to their customers?

20 A. That they were efficient agency
21 traders of FX giving you access to a market you
22 couldn't get as a retail investor and giving you
23 leverage you couldn't get as a retail investor or
24 even an institutional investor. They were on
25 your side helping you make big bets in FX as

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2 efficiently as possible.

3 And that's clearly -- it seems not
4 to be what they were doing based on what they
5 admitted to the regulator and were banned from
6 doing in this country.

7 Q. And what is your understanding of
8 what they "admitted to the regulator"?

9 A. That they were using their
10 information from their customers to make money,
11 selling that information to an undisclosed
12 sisterly-related party friendly organization of
13 former employees and who knows what other
14 kickbacks and side money was involved.

15 Q. Okay. Are you familiar with a
16 company called Effex, E-F-F-E-X?

17 A. I believe that is the name of that
18 company that was mentioned in the regulatory
19 filings.

20 Q. Okay. And what is your understanding
21 of the FXCM's relationship with Effex?

22 A. So, based on my recollection or based
23 on the press release in the announcement, it was
24 former employees and there were some payments
25 back and forth and Effex was taking the orders

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2 2014?

3 A. No.

4 Q. Would you have generally reviewed the
5 10-Ks, 10-Qs, et cetera, in connection with your
6 investment of -- in FXCM?

7 A. Yes.

8 Q. Do you recall reviewing a 10-K for Q3
9 of 2014?

10 A. Yes. But I don't recall everything
11 in it.

12 Did that disclosure state that they
13 were in risk of being banned?

14 Q. Is that your understanding of the
15 allegations in the nature of your claim?

16 A. It's part of it, yeah.

17 Q. And in what way is that "part of it"?

18 A. They had not disclosed to the market
19 what they had been doing, the true scope and
20 nature of it and that it could have cause a risk
21 of being banned among other things and, frankly,
22 that their historical business may not have been
23 as profitable as we thought it was, because they
24 never disclosed and I still don't know, like, how
25 much of the money they made was truly through

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2 much it was, maybe they never did. But, like, to
3 the extent that they -- that that was really what
4 was the source of maybe some of their profits, I
5 don't know. But, like, you know, that would have
6 changed the nature of what we thought the true so
7 call it undisturbed un-Swiss franc impacted
8 business was worth.

9 Q. If disclosed its prior relationship
10 with Effex at the end of 2014 and that the
11 relationship had ended, would that have changed
12 your investment decision?

13 MR KIM: Objection to form, calls for
14 speculation.

15 Q. You can answer.

16 A. If they had disclosed it with full
17 ramifications, it -- like, i.e., how much profit
18 it was due, what the business -- business, you
19 know, impact was, the risk of them getting
20 banned, how value -- if it had been really -- if
21 it had been clear disclosed with valuations, I
22 probably would have -- might have paid a lower
23 price, I don't know. It might have been willing
24 to pay a lower price, probably. Because it
25 wasn't what we thought it was.

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2 We thought it was an agency business
3 that was providing leverage. Instead it was
4 something else with a lot of risk to potentially
5 operating. Like, they were getting -- by putting
6 themselves at risk of being banned, which they
7 clearly were, because they were, they took off a
8 lot of the upside tail in this investment or just
9 general upside, frankly, or any upside. But we
10 didn't know that.

11 MR. ISAJIW: Okay. I want to
12 introduce another exhibit.

13 Ashley, this is 25. What number are
14 we on?

15 MR KIM: The last one was 12, which
16 was the spreadsheet.

17 MR. ISAJIW: So this -- so this will
18 be 13.

19 (Deposition Exhibit 13, Credit Suisse
20 Statement of Account 2/1/17 to 2/28/17
21 PLA-00002403 to PLA-00002406, was marked for
22 identification.)

23 MS. DePALMA: Okay, it should be
24 uploaded.

25 A. I see it.

C E R T I F I C A T E O F R E P O R T E R

I, SILVIA P. WAGE, a Certified Shorthand Reporter, Certified Realtime Reporter and Registered Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision; that before completion of the deposition, review of the transcript [X] was [] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.


<%9932, Signature%>

SIGNED _____ dated: April 30, 2020

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